

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**BRAD McKOUEEN and
DELTA STAFFING LLC,**

Plaintiffs,

v.

UNITED STATES

Defendants.

2:08-misc-265

MEMORANDUM ORDER

Pending before the Court is THE UNITED STATES' MOTION TO DISMISS (Document No. 3), which was filed on June 2, 2009. On June 3, 2009, the Court entered a Text Order which directed the pro se Plaintiffs to file a response to the Motion to Dismiss on or before June 22, 2009. This Text Order was sent to the Plaintiffs via Certified Mail and a certified return receipt card was signed on June 6, 2009 and returned. However, the deadline passed several weeks ago and, as of the date of this Memorandum Order, Plaintiffs have not filed a response to the Motion to Dismiss.

Plaintiffs Brad McKouen and Delta Staffing, LLC, filed a pro se Petition to Quash Summons issued by the Internal Revenue Service ("IRS"). The United States contends that the Petition should be dismissed for several reasons: (1) Plaintiffs failed to properly serve the Petition on the United States; (2) Delta Staffing, as a corporate entity, may not be represented by a non-attorney; and (3) the Petition was not signed by any party.

Federal Rule of Civil Procedure 12(b)(5) provides for dismissal based on insufficient service of process. The rules governing service are set forth in Federal Rule of Civil Procedure 4. Indeed, on September 29, 2008 (shortly after the Petition was filed), the Court entered a Text Order which specifically recited applicable sections of Rule 4 and directed Plaintiffs to properly serve the Petition on the United States and to file Proof of Service with the Court. Plaintiffs bear the burden of establishing proper service. *Grand Entertainment Group v. Star Media Sales*, 988 F.2d 476, 488 (3d Cir. 1993).

Over the ensuing ten months, Plaintiffs have failed to effectuate proper service. Plaintiffs did send a FedEx Express package to the IRS offices in Saginaw, Michigan as reflected in the "Certificate of Service" filed on October 8, 2008. However, that effort clearly fails to satisfy the requirements of Rule 4(i), which requires service upon the United States attorney and the Attorney General of the United States in Washington, D.C. Because Plaintiffs have previously been given specific notice of the need to effectuate proper service, and have failed to show good cause for their failure to do so, there is no reason for a further extension of time. Accordingly, the Petition will be dismissed pursuant to Fed. R. Civ. P. 12(b)(5).¹

In accordance with the foregoing, THE UNITED STATES' MOTION TO DISMISS (Document No. 3) is **GRANTED** and the Petition to Quash IRS Summons is hereby **DISMISSED**. The clerk shall docket this case closed.

SO ORDERED this 23rd day of July, 2009.

BY THE COURT:

s/ Terrence F. McVerry
United States District Court Judge

cc: Megan E. Farrell, Assistant United States Attorney (via CM/ECF)

Brad McKouen
15121 Western Valley Drive
Holly, MI 48442-1912
(via United States regular and certified mail)

¹The Court need not address the alternative arguments raised by the United States, but notes that they also are meritorious.